Report

of the

Committee on Uniform State Laws

of

The Pennsylvania Bar Association

Bedford Springs, Pa.
1911

REPORT OF THE COMMITTEE ON UNIFORM STATE LAWS

To the Members of the Pennsylvania Bar Association:

The Committee on Uniform State Laws respectfully report:

That the Legislature of Pennsylvania at its last session had before it the following Acts recommended by the Conference of Commissioners on Uniform State Laws, viz.:

The Uniform Sales Act.
The Uniform Stock Transfer Act.
The Uniform Bill of Lading Act.
The Uniform Divorce Act.
The Uniform Act relating to Wife Desertion.

The first four of these Acts were introduced at the request of the Commissioners on Uniform State Laws by the Hon. Ernest L. Tustin in the Senate, the last named Act by the Honorable Ralph Gibson, of Lycoming County, in the House. Of these Acts the following was passed and approved by the Governor:

The Uniform Stock Transfer Act, approved May 5, 1911.

1911, The Uniform Bill of Lading Act has passed both houses and is in the Governor's hands at the time of printing this report.

No action was taken on the Desertion Act.

The Uniform Divorce Act passed the Senate, but was never reported out of the Committee of the House.

The Uniform Sales Act passed the Senate, was favorably reported in the House, but did not reach a final vote.

DIVORCE

Your Committee regrets to report that the trend of legislation in Pennsylvania on this subject has been distinctly away from uniformity, and in the direction of methods condemned by the weight of authority as represented in the various respectable lay and religious bodies that have been engaged in efforts to bring about a reform in the laws governing divorce and divorce procedure.

The Act of March 13, 1815, is, practically, the fundamental law of Pennsylvania on the subject of Divorce. Section 2 of this Act, preserves to either party in divorce proceedings the right of trial by jury. The Constitution of 1838 and the Constitution of 1874 provide that "trial by jury shall be as heretofore and the right thereof shall remain inviolate." While in England prior to the Act of Parliament of 1857, only the ecclesiastical courts had jurisdiction of divorce proceedings, yet in this country, even in colonial times, the several Legislatures assumed jurisdiction over the matter of divorce. As late as 1846 the Pennsylvania Legislature asserted its right to pass an Act granting a divorce. Since then, the right has been conferred on the Courts of every State.

At the last session of the Legislature, an Act was introduced into the Lower House by Hon. John R. K. Scott, of Philadelphia, amending Section 2 of the Act of March 13, 1815. This Act was approved by the Governor April 20, 1911. By its provisions, either of the parties to a divorce proceeding who desires a trial by jury is required to take out a rule to show cause why a jury trial should not be granted. The court, after hearing, may either discharge or grant the rule or frame the issue itself, and only the issues ordered by the court shall be tried; but such rule shall not be granted when, in the opinion of the Court, the trial cannot be had without prejudice to public morals. If no jury trial is asked for, or if the rule to show cause

is discharged, the court may proceed to hear the case, or may, upon motion of either party, appoint a Master to take testimony, etc.

Section 2 of the "Scott Bill" makes the Act applicable to all cases pending, as well as to cases hereafter to be tried.

This Act seems objectionable for two reasons. First, because it deprives the parties of the right to *demand* a jury trial, second, because it is retro-active and applies to pending cases. The first reason may perhaps be supported on Constitutional grounds; the second on grounds of public policy. Section 40 of the Uniform Bill preserves the right of each party to demand a trial by jury. Section 85 provides that "nothing whatever in this Act shall affect or apply to any actions for annulment of marriage or for divorce now pending." The Uniform Divorce Bill, although recommended by the Pennsylvania State Bar Association; by the Conference of Commissioners on Uniform State Laws; by the American Bar Association and by the National Civic Federation, has been adopted in only three states: Delaware, New Jersey, and Wisconsin. It has failed three times in Pennsylvania. In 1907 it passed the Senate and was not reported out by the Committee in the House. In 1909 it was not even reported out by the Senate Committee. In 1911 it passed the Senate but was held up in the Judiciary Special Committee of the House, not even a hearing being accorded to the Commissioners who caused the bill to be introduced.

Comment upon the attitude of this Committee is needless. Evidently there is a powerful influence in the profession which does not desire any reform in the divorce laws of this State, and this has sufficiently counter-balanced the well meant efforts of those who deplore the evils arising, as they believe, from existing methods.

It has never been claimed that the Uniform Divorce Bill would materially reduce the number of divorces, but

it has been and is confidently believed that it would reduce the opportunities for fraud, and, by the provisions relating to decrees *nisi,* give an opportunity for reconciliation as well.

Until the sentiment of the community in general becomes thoroughly aroused and makes itself felt by an insistent demand, it is not likely that future efforts for divorce reform will meet with any better fate than has befallen the Uniform Divorce Act in successive legislatures of this State.

PROGRESS OF UNIFORMITY OF LEGISLATION

The twentieth annual meeting of the Conference of Commissioners on Uniform State Laws was held at Chattanooga, Tenn., August 25th, 26th, 27th, and 29th, Commissioners being present from twenty-seven States, including the District of Columbia and Porto Rico.

The Conference gave much consideration to the draft of a Uniform Incorporation Act, a Uniform Act on the subject of Marriage and Licenses to Marry, and on Family Desertion and Non-support, also an Act to establish a Law Uniform with the Laws of other States relative to the execution of Wills, and an Act to establish a Law uniform with the Laws of other States relative to Probate in this State of Foreign Wills. None of these Acts were completed in Conference, excepting the Act relating to Desertion and Non-support of wife or children and the Act relating to Foreign Wills, which was recommended under the title "An Act Relative to Wills executed without this State, and to Promote Uniformity among the States in this respect." Copies are hereto annexed.

DESERTION

The foot-notes to the "Desertion Bill" explain its origin, scope and purpose. Until some fifty years ago Family

Desertion was regarded only as an offense against the Poor Laws. In 1867 Pennsylvania provided a remedy to the deserted family. Other States followed suit. And yet as late as 1900 in New York and some other States the offense was classed as "Vagrancy," "Disorderly Conduct," etc. Even under the Pennsylvania Act of 1867 it was easy for the deserter to go to another State, and, since the offense was only "quasi-criminal," he was not subject to extradition. The Pennsylvania Act of March 13, 1903, made the offense a misdemeanor, and therefore extraditable. Most states have done the same. A few have made it a felony. Imprisonment, however, is of little benefit, either to the suffering family or to the State. The penalty of a sentence at hard labor has proved most effective in the District of Columbia and in those states which have adopted the same. This Uniform Bill (skeleton in form, to be modified by each state according to its forms of procedure, as, *e. g.* in Massachussetts in a statute now pending) is a condensation of the best features of the present law of the various states. To our present Desertion Laws should be added the "Sentence at hard labor," "The Suspended sentence," and the "Probation System." The Associated Charities of Pittsburg, by its attorney, Ward Bonsall, Esq., prepared and introduced in the last Legislature a Bill amending the Act of 1867, introducing all of these features. The Bill passed the Senate, but was not reported from the House Committee.

FOREIGN WILLS

The lack of uniformity in the legislation of the various states as to the mode or form of executing a last will and testament, and the numerous conflicts over wills executed without each state, seemed of sufficient importance to induce the Conference of Commissioners on Uniform Laws to adopt a uniform act relating to the execution of foreign wills. This act, as adopted by the Conference of Commis-

sioners on Uniform Laws, together with a proviso recommended by your Committee, will be found in the appendix. In explanation of the scope of this act it is proper to make the following observations:

The present law of Pennsylvania concerning wills executed without this state is covered by the following acts of Assembly, towit; The Act of April 8, 1833, P. L. 249, sections 6 and 17; The Act of March 29, 1832, P. L. 135, section 12; the Act of January 27, 1848, P. L. 16; The Act of April 26, 1855, P. L. 328, section 11.

Section 6 of the act of 1833 is as follows:

"That every will shall be in writing, and unless the person making the same shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof, or by some person in his presence, and by his express direction, and in all cases shall be proved by the oaths or affirmations of two or more competent witnesses, otherwise, such will shall be of no effect."

It has long been the rule in Pennsylvania that a will disposing of real estate must be executed according to the Lex Rei Sitae, and therefore a foreign will disposing of real estate in Pennsylvania must be executed as required by section 6 above quoted.

Section 17 of this act provides:

"That nothing in this act contained shall be construed to apply to the disposition of personal estate by a testator whose domicile is out of this Commonwealth."

This is a recognition of the rule laid down in Desesbats vs. Berquier, 1 Binn., 336, that "a will disposing of personal property must be executed according to the law of the testator's domicile *at the time of his death.*" See also Carey's app. 75 Pa. 201; Price vs. Price, 156 Pa. 617; Beaumont's estate, 216 Pa. 350.

As to the probate of foreign wills, section 12 of the act of March 29, 1832, provides as follows:

"Copies of wills and testaments proved in any other state or country, according to the laws thereof, and duly authenticated, may be offered for probate, before any Register having jurisdiction and proceedings thereon may be had with the same effect, so far as respects the granting of letters testamentary, or of administration, with the will annexed, as upon the originals, and if the executor or other person producing any such copy shall produce also therewith a copy of the record of the proceedings for the probate of the original thereof, and of the letters testamentary, or other authority to administer, issued thereon, attested by the person having power to receive the probate of such original, in the place where it was proved, with the seal of office, if there be one annexed, together with the certificate of the chief judge or presiding magistrate of the state, country, county or district where such original was proved, that the same appears to have been duly proved, and to be of force, and that the attestation is in due form, such copies and proceedings shall be deemed sufficient proof, unless the contrary be shown for the granting of letters testamentary or of administration, with the will annexed, as the case may require, without the production or examination of the witnesses attesting such will."

This provision simply authorizes the substitution of an exemplication of the probate of a foreign will for the production of the original will before the Register of Wills. But it does not prevent the offering of such original will before the Register in this state; See Flannery's will, 24 Pa. 502; Brown's estate, 2 D. R. 720. It follows that when neither the original will is produced, nor a proper exemplification thereof, it is of no effect to pass the title to real estate; DeRoux vs. Girard's Ex'r, 112 Fed. Rep. 89.

The Act of January 27, 1848, provides

"That every last will and testament heretofore made, or hereafter to be made, excepting such as may have been finally adjudicated prior to the passage of this act, to which the testator's name is subscribed, by his direction and authority, or to which the testator hath made his mark or cross, shall be deemed and taken to be valid in all respects: provided, the other requisites, under existing laws, are complied with."

This act modifies section 6 of the act of 1833 in that it makes the mark of the testator the equivalent of his signature.

Not infrequently instances occur where a foreign will disposing of real estate is executed according to the law of the testator's domicile or according to the law of the place where executed, but not according to the requirements of the Lex Rei Sitae. Other instances have occurred of wills of personalty executed neither according to the law of the testator's domicile nor of Pennsylvania, but according to the law of the *place of its execution*. The proposed uniform act is intended to eliminate so far as foreign wills are concerned; (a) The distinction between wills of real estate and wills of personalty; (b) The necessity of "attesting witnesses," such be not required by the law of the place of execution, even though they be required by the *Lex Rei Sitae*. Therefore under this proposed act a foreign will executed anywhere in the manner prescribed by this act *i. e.* "in writing and subscribed by the testator" in the mode prescribed by the law "either of the place where executed or of the testator's domicile," whether it be of real estate or of personalty, will be valid in Pennsylvania, and either the original or a proper exemplification thereof may be presented for probate. Vice versa a will executed in Pennsylvania as required by this act will be valid in any other state accepting its provisions, even though a domestic will in such state, *e. g.* Rhode Island, requires three attesting witnesses. It is hardly necessary to state that the proposed act does not apply to domestic wills; though it would apply to a will made by a resident of Pennsylvania in another state where he might be sojourning temporarily.

It should be added that the proposed act is permissive, not exclusive, and is, therefore, cumulative. In other words a foreign will of real estate situated in Pennsylvania executed in conformity with the requirements of section six of the act of 1833, *i. e.* of the Lex Rei Sitae, will still be

valid. So also a foreign will of real estate situated in Pennsylvania to which the testator has affixed his mark, will be valid in this state "if the other requisites under existing laws have been complied with," *i. e.*, if it be in writing and proved by two competent witnesses as required by section six of the act of 1833. This would be so even though a mark be not recognized by the law of the place of execution as the equivalent of the testator's signature.

It remains to consider what effect the act will have upon the provisions of section 11 of the act of April 26, 1855, P. L. 328. That section reads as follows:

> "That no estate, real or personal, shall hereafter be bequeathed, devised or conveyed to any body politic, or to any person in trust for religious or charitable uses, except the same be done by deed or will, attested by two credible, and at the time, disinterested witnesses, at least one calendar month before the decease of the testator or alienor; and all dispositions of property contrary hereto shall be void and go to the residuary legatee or devisee, next of kin, or heirs, according to law: Provided, That any disposition of property within said period, bona fide made for a fair valuable consideration, shall not be hereby avoided."

It is to be noted that this section contains two independent conditions; First, that a bequest or devise for religious or charitable uses, shall be "attested by two credible witnesses"; second that it shall be executed "at least one calendar month before the decease of the testator." The first condition relates solely to the mode or form of execution; the second condition makes void such bequests if executed within a certain "time limit." The proposed act clearly relates solely to the form or mode of execution, and it would therefore repeal the requirement of two credible "attesting witnesses." The "time limit" prescribed by the act of 1855 has nothing to do with the *mode* of execution. Therefore, by a most strained construction only could the proposed act be held to repeal the "time limit" clause in the act of 1855. But in order that there may be

no doubt in this regard your Committee recommend that the second proviso, as given below in the appendix, be added to the act as adopted by the Conference of Commissioners on Uniform Laws. This will leave the law as it now stands with regard to bequests or devises for religious or charitable uses, executed within one month before the decease of the testator. In this connection see Hildeburn's estate 4 D. R., p. 40.

OTHER ACTS

The Conference has now before it tentative drafts of Acts relating to Partnership, to Marriage and Licenses to Marry, and the Formation and Regulation of Corporations, which will be considered in due time.

STATISTICS

It may be well to state that thirty-eight states, three territories and the District of Columbia have adopted the Negotiable Instruments Act; twenty-one states and the District of Columbia the Warehouse Receipts Act; six states and one territory the Sales Act; four states the Stock Transfer Act; three states the Bill of Lading Act; two states the Foreign Wills Act; three states the Uniform Divorce Act, and one state the Family Desertion Act.

The next meeting of the Conference of Commissioners will be held at Boston, Mass., August 23rd, 1911.

RECOMMENDATIONS

In accordance with custom, the Committee submits the two Acts approved by the Conference of Commissioners and recommends their approval by this Association in the following resolutions:

1. *Resolved,* That this Association approves the draft of an Act prepared under the direction and recommended by the Conference of Commissioners on Uniform State Laws in National

conference, entitled "An Act to make Uniform the Law Relating to Desertion and Non-support of Wife by Husband, or of Children by either Father or Mother, and Providing punishment therefor, and to Promote Uniformity among the States in reference thereto."

2. *Resolved,* That this Association approves the draft of an Act prepared under the direction and recommended by the Conference of Commissioners on Uniform State Laws in National Conference, entitled "An Act Relative to Wills executed without this State, and to Promote Uniformity among the States in that respect;" as amended for Pennsylvania.

3. *Resolved,* That the Legislature and the Governor of Pennsylvania be respectfully urged to adopt and approve the foregoing Acts.

Respectfully submitted,

WALTER GEORGE SMITH,
WILLIAM D. CROCKER,
ISAAC HIESTER,
Committee

APPENDIX

AN ACT

RELATING TO DESERTION AND NON-SUPPORT OF WIFE BY HUSBAND, OR OF CHILDREN BY EITHER FATHER OR MOTHER, AND PROVIDING PUNISHMENT THEREFOR; AND TO PROMOTE UNIFORMITY BETWEEN THE STATES IN REFERENCE THERETO.

SECTION 1.—Be it enacted, etc., (1)

That any husband who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any parent who shall, without lawful excuse, (2) desert or wilfully neglect or refuse to provide for the support and maintenance of his or her (3) child or children under the age of sixteen years in destitute or necessitous circumstances, shall be guilty of a crime (4) and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the ..... (5), not exceeding two years, (6) or both, with or without hard labor, in the discretion of the Court. (7)

NOTE—The annotations were prepared for the Conference of Commissioners on Uniform State Laws.

1. This Act, throughout, follows very closely the Act of Congress of March 23rd, 1906, for the District of Columbia, the principles of which are very fully discussed in the monograph of William H. Baldwin, Esq., of the Board of Managers of the Associated Charities of Washington, D. C., entitled "Family Desertion and Non-Support Laws." Nearly every State has some provision relating to this subject. The Acts of Assembly in many States are quite full and comprehensive. The Act adopted by Congress for the District of Columbia was the result of correspondence by the Board of Associated Charities of Washington, with Governors, Attorneys-General, District Attorneys, and prominent lawyers of many States. This Act of Congress works very satisfactorily in the District of Columbia. At the meeting of the Committee in Washington in January, 1910, Mr. Baldwin was present, and greatly assisted the Committee with advice and suggestions and information as to the practical workings of the Act in the District of Columbia.

Acts of Congress differ very much from Acts of Assembly of the various States, in that they are much more concise, and generally embrace, by way of proviso, matters that the legislatures of the various States are inclined to express in separate sections. Each mode of expression has its advantages. But, in view of the fact that the courts of each separate State are so often called upon to determine the constitutionality of various parts of Acts of Assembly, and since one part of an Act may be sustained as constitutional, and another part rejected as unconstitutional, it seems preferable for State legislatures to divide every Act into separate and distinct sections. Therefore, the provisions of Section 1 of the District of Columbia Act have been divided into several sections.

2. It will be observed that in line 1, "wife desertion" must be "without just cause," whereas in line 5 "child desertion" must be "without lawful excuse." The reason for the distinction is this: Wife desertion is a cause of divorce as well, and in divorce proceedings such desertion must have been "without just cause" on the part of the *deserted* wife. But in the case of child desertion there must be a "lawful excuse" on the part of the *deserting* parent. In other words, in the first instance the ground justifying the desertion must be furnished or occasioned by the deserted party. In the second instance the excuse or ground for desertion must be furnished by the deserting party.

3. The draft of this Bill as reported to the Conference at Chattanooga included illegitimate as well as legitimate children, largely upon the strong recommendation of Mr. W. H. Baldwin, of Washington, D. C. The District of Columbia Act does not include illegitimate children, but a bill was introduced at the last session of Congress to bring them within its provisions, and received the approval of the Judiciary Committee of both Houses. Nebraska and Ohio, however, seem to be the only States whose Desertion Laws apply to illegitimate as well as legitimate children. While there are strong moral and legal grounds for so doing, yet inasmuch as the Bastardy Laws of every State make some provision for the support of illegitimate children, it was deemed advisable by the Conference not to combine Family Desertion with the desertion of a *"nullius filius,"* since the proper remedy would be by amendment of the Bastardy Laws.

4. "Family Desertion," according to the tables prepared by Mr. Baldwin, is made a felony in six States, viz., Indiana, Michigan, Nebraska, New York, Ohio, and Wisconsin; a misdemeanor in thirty-eight States, including the District of Columbia; while in five States there is no law on the subject—to wit, in Iowa, Nevada, Oregon, Tennessee and Texas. Some States, like Pennsylvania, treat Family Desertion in two ways, either as a quasi-criminal offense as under the Act of April 13, 1867, P. L. 78, where the offender is haled before the court of Quarter Sessions on information made before a Justice of the Peace or other Magistrate; and after hearing, without a jury, the Court may order him to pay a certain sum for the support and maintenance of his wife or children; or as a misdemeanor, as under the Act of March 13, 1903, P. L. 26. Under this latter Act, which is cumulative, the offender is entitled to trial by jury. The penalty is imprisonment or fine, or both; the fine if any, to be paid or applied in whole or in part to the wife or children, as the court may direct. In Pennsylvania a civil remedy is also granted to the wife against the husband by the Act of April 27, 1909, P. L. 182. Such civil remedy obtains in many other States.

As pointed out by Mr. Baldwin in his study on "Family Desertion and Non-Support," it is very essential that the offense of desertion and non-support be raised to the grade of a crime, in order that it may become an extraditable offense, as many instances occur where the husband removes to another State, leaving his family helpless and destitute. But as thirty-eight States and Territories have made it a misdemeanor, and since under the Act of Congress of February 12, 1793, any person charged with the commission of a felony *or other crime*, is subject to extradition, the Conference substituted the word "crime" for "misdemeanor." In one State at least, South Carolina, and probably others, a misdemeanor is not punishable by confinement at hard labor.

5. Here will be inserted the place of imprisonment.

6. Unless there is a constitutional provision in any State limiting the term of imprisonment for a misdemeanor to one year or less, this clause "not exceeding two years" is clearly within the power of the Legislature. The Committee, when at Washington, adopted by way of amendment to Section IV. of the printed report, now Section IV, the words "for a period not exceeding two years," but omitted to make a similar amendment to Section I. This clause is therefore added that Sections I and IV may correspond. While "twelve months" is the maximum term of imprisonment fixed by the District of Columbia Act.

it has been found in practice that it often becomes necessary to begin proceedings *de novo* at the end of the first year. It was therefore thought best to increase the time to two years.

7. At stated above in Note 4, confinement at hard labor is never imposed in some States where the offense is only a misdemeanor. In other States the penalty "at hard labor" is not imposed except where the imprisonment is in the Penitentiary, or a Reformatory, or House of Correction. It rarely obtains where the imprisonment is in the County Jail; partly for the practical reason that in them there are neither appliances, nor space nor opportunities for what is known as "convict labor." But as the penalty provided in this Section reads, "with or without hard labor," the question will rest in the discretion of the court according to the penal provisions of the laws of each State. In some States "convict labor" has been either abolished or limited as the result of the influence of the Labor Unions.

In Maryland, at the Baltimore Penitentiary, "Contract Labor" is permitted by law. Recent investigations show that the labor of the prisoners enures not only to the benefit of the State, but of the prisoners themselves, who by working overtime earn for themselves or for the support of their families, fully as much as goes to the State. In the District of Columbia, which is under control of Congress, and therefore in a sense, sui generis, prisoners at hard labor may be compelled to work upon the streets of the City of Washington at a fixed wage per diem, and of their wages, under the Act of Congress of 1906, an amount equal to fifty cents a day is paid over to, or for the benefit of, the prisoner's family. It would be impracticable, perhaps, to insert a clause in this Bill providing for the employment of offenders under this Act upon the streets or highways of the several municipalities or counties of each State under the term "at hard labor." Nevertheless, it is evident that if such provision could be adopted by each State, it would relieve the public at large from the expense of supporting the families of such offenders. Such a provision is well worth the consideration of every State.

SEC. II.—Proceedings under this Act may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, against any person guilty of either of the above named offenses. (1)

1. The initial proceedings in all desertion cases should be instituted before the court of lowest jurisdiction. In some States this is a Justice of the Peace, in others a Municipal Court, in others a County or District Court. The point to be borne in mind in this regard is that the remedy be as simple and speedy as possible.

SEC. III.—At any time before the trial, upon petition of the complainant and upon notice to the defendant, the Court, or a Judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, *pendente lite*, and may punish for violation of such order as for contempt. (1)

1. This Section is in form the same as an amendment to Section IV of the printed Bill offered at Detroit by Mr. Noel, of Indiana. The purpose of the Section is plain; namely to provide for support for the family pending the beginning of the proceedings and the final order of the court. Where the proceedings are begun before a court of record, the application, of course, can be

made at any time. Where the proceedings are begun before a Justice of the Peace, or other Magistrate, who must make his return to the court, it follows that the application under this Section cannot be made until such return has been filed with the Clerk of the Court. But that is a minor matter of procedure.

SEC. IV.—Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding two years, (1) to the wife or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee; (2) and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a Judge thereof in vacation, may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect. (3)

1. The term of one year in Section IV of the Bill as printed was changed by the Committee at Washington to read "not exceeding two years," for reasons stated in Note 6 to Section I.

Section I makes the offense of Desertion a crime, and prescribes the penalty; Section III secures support for the family by an order pendente lite; but as the main purpose of a Desertion Act is the protection and maintenance of the family, it is apparent that additional remedies are required. This Section endeavors to meet that need: a. By an order of support entered before trial with the consent of the defendant; b. By an order of support made if a plea of guilty be entered to the indictment; c. By an order of support made after conviction. All of these orders to be in lieu of, or in addition to the penalties prescribed by Section I.

3. This clause providing for release on probation is taken from the District of Columbia Act. The Desertion Acts of many States contain a similar provision which is found in practice to be very effective. The penalty of imprisonment, especially at hard labor, soon brings the wife deserter to a willingness to give surety tor the support of his family, and a means is thus secured for enforcing the order of support authorized by the first paragraph of this Section.

SEC. V.—If the court be satisfied by information and due proof under oath, that at any time during said period of two years the defendant has violated the terms of such order, it may forth-

with proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children. (1)

1. This provision is taken from the District of Columbia Act which follows the Acts of Illinois, Louisiana and Virginia.

Sec. VI.—No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such facts in a civil action. (1) In no prosecution under this Act shall any existing statute or rule (2) of law prohibiting the disclosure of confidential communications between husband and wife apply, (3) and both husband and wife shall be competent (4) witnesses to testify against each other (5) to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; (6) Provided that neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be *prima facie* evidence that such desertion, neglect or refusal is wilful. (7)

1. While under the Constitution of the United States, and probably of each State, no defendant can be compelled to incriminate himself, yet both in criminal and civil actions the issue of legitimacy or illegitimacy of children is a matter of frequent occurrence. This clause relating to a proceeding where a wife or husband, necessarily by the fault of the other, is forced to protect life or reputation, as a stranger would, permits the character of the proof to be such as would be required in a civil action—*i. e.,* preponderance of proof may control.

2. Section VI *as formerly printed* refers simply to "existing provisions of law." But as "existing provisions of law" might be construed as including only statutory provisions and as not being broad enough to include judicial utterances upon *The Rule of Law* relating to confidential communications, the phrase is therefore changed to read "Existing Statute or Rule of Law."

3. This clause relating to disclosure of confidential communications between husband and wife opens a field for wide discussion. Under the Common Law the fiction of unity of husband and wife, and the farther fiction forbidding parties in interest to testify either for or against each other long obtained. The latter fiction has been abolished in most States. The former fiction has been abolished in many States both in criminal and civil proceedings where—

(a) The consent of the other party is given at the trial; or (b) Where the marital relation has been so violated by the act of either as to abolish the reason for the rule. The Constitution of the United States provides that "no

person can be compelled in any criminal case to be a witness against himself." The Constitutions of many States provide that no person can be compelled in any criminal case "to give evidence against himself." But these constitutional provisions do not apply to or limit the power of the State Legislature to require the disclosure of confidential communications between husband and wife. The forbidding of such disclosures was the policy of the law; but if the confidential marital relation has been violated by the act of either party, the reason of the rule ceases. In such case the communications do not arise from the confidence of the parties in each other, but from the want thereof; and therefore even without statutory authority either party may testify to the same. Seitz vs. Seitz, 170 Pa., Page 171.

4. An exception to the rule excluding testimony of husband and wife against each other is to be found in cases of personal outrage by one on the other.

30 Amer. and Eng. Cyc., page 954.

This exception being based on public policy it follows that the injured spouse is not only competent but is compellable to testify if unwilling.

30 Amer. and Eng. Cyc., page 955, Johnson vs. State, 94 Ala., page 53; Turner vs. State, 60 Miss., page 351; S. C. 45 Amer. Rep., page 412; Bramlette vs. State, 21 Tex. App., page 611; see also "Cyc." pp. 961-2, (2)—(b); 46 Amer. Rep., page 241. In Pennsylvania, by the Act of May 23, 1887, P. L. 158, Section 2, it is provided that in criminal cases neither husband nor wife shall be competent to testify against each other "except in proceedings for desertion and maintenance, and in any criminal proceeding against either for bodily injury or violence attempted, done or threatened upon the other"; and also that neither shall "be competent or permitted to testify to confidential communications made by one to the other, unless this privilege be waived upon the trial." A similar provision will be found in the statutes of many States. It is therefore apparent that it lies in the power of the Legislatures of each State to abrogate the Common Law rule forbidding husband or wife to testify against each other (whether in criminal or civil proceedings), and forbidding the disclosure of confidential communications. No constitutional prohibition is violated thereby.

5. In Section VI of the Detroit report the clause read, "testify to any and all relevant matters." At the meeting at Detroit in August, 1909, the words "against each other" were inserted after the word "testify." The reasons for such amendment have been given in Notes (3) and (4) supra.

6. Since, as explained in Note 1, the first paragraph of this Section limits the proof of the parentage of children to the character of proof required in civil actions, it would seem that this last clause relating to "the fact of marriage and the parentage of any child or children," cannot be construed to compel either parent to incriminate himself or herself, but to avoid all doubt upon this point it has been thought wiser to add the proviso.

7. Section VI of the Detroit Bill, included only the words "desertion" and "neglect," whereas Section 1 included the words "desert, neglect or refuse." The words "desert, neglect or refuse," are well established and generally adopted in statutes of this character; therefore, the same terminology as obtains in Section 1 has been adopted.

SEC. VII.—It shall be the duty of the sheriff, warden, or other official in charge of the County Jail, or of the custodian (1) of the Reformatory, Workhouse, or House of Correction, in which any person is confined on account of a sentence at hard labor, under this Act, to pay over to the wife, or to the guardian, curator or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee,

at the end of each week, for the support of such wife, child or children, a sum equal to ..... for each day's hard labor performed by said person so confined. (2)

1. The term "custodian" is generic. In each State the proper title of the official in charge of the Reformatory, Workhouse, or House of Correction should, perhaps, be substituted.

2. This Section is copied from Section III of the District of Columbia Act with one or two verbal changes.

In order to carry out the provisions of this Section there must, of course, be additional legislation in each State specifically providing for "contract" or "convict" labor; and a fund provided, from which to draw for the purposes covered by this Section. As stated before, the District of Columbia is *sui generis* in this regard. Congress makes an annual appropriation to this end. In the District of Columbia, desertion offenders are put at "hard labor" upon the streets under "contract labor." The method there in vogue of treating desertion offenders is worthy of study and imitation by every State.

SEC. VIII.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (1)

1. This Section was not adopted by the Conference at the Chattanooga meeting, but as the title was amended by adding the clause "And to promote uniformity between the States in reference thereto," it of course becomes necessary to insert the language of this Section in this Act as in all other uniform Acts.

SEC. IX.—Repealing clause.

SEC. X.—This Act shall take effect the ..... day of ....., Anno Domini 19....

AN ACT

RELATIVE TO WILLS EXECUTED WITHOUT THIS STATE AND TO PROMOTE UNIFORMITY AMONG THE STATES IN THIS RESPECT

SECTION 1.—Be it enacted, etc., that a last will and testament executed without this state in the manner prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state; provided, said last will and testament is in writing and subscribed by the testator; and provided further that nothing herein contained shall be so construed as to repeal that provision of section eleven of the act entitled "An Act Relating to Corporations and to estates held for Corporate, Religious and Charitable uses," approved April 26, A. D. 1855, which requires that bequests or devises for religious or charitable uses shall be executed "at least one calendar month before the decease of the testator."

SUPPLEMENTAL REPORT OF THE SPECIAL COMMITTEE ON CONSTITUTION OF COURTS IN PENNSYLVANIA

To the Members of the Pennsylvania Bar Association:

GENTLEMEN:—At the meeting of the Association held at Bedford Springs, in June, 1909, your Committee was requested to consult with the local Bar Associations of the State, and ask their judgment upon the questions presented in the arguments of the members on the motion to adopt the report of your Committee:

First.—Whether or not it is wise to consolidate the Supreme and Superior Courts, and have the Court sit in two divisions; or

Second.—To consolidate it as one Court; or

Third.—To retain the present constitution of the Courts.

Your Committee endeavored by a circular letter directed to the Presidents or Secretaries of the various Bar Associations of the State to obtain their views on these questions. So few of the local Associations responded to the letter before our last meeting at Cape May that your Committee was then requested to urge all the Associations throughout the State to make answer. We again asked the various Associations to take some action on the questions involved. The Associations of Clearfield, Erie, Forest, Jefferson, Lebanon, Snyder, Tioga and Union, have reported in favor of consolidating the Supreme and Superior Courts, the Court to sit in two divisions. Bradford would consolidate the Courts as one Court. Allegheny, Blair, Centre, Lancaster, Mifflin, Philadelphia, Somerset, Warren and Washington, favor the present constitution of

the Courts. The Cameron County Association was unable to agree upon the questions. The Butler, Delaware and Northumberland Associations referred the question to Committees. No action was taken by the Cumberland, Columbia, Carbon, Indiana, Lycoming, Lackawanna, Luzerne, and Montgomery Associations. All of the other Associations failed to reply to your Committee's letters.

Respectfully submitted,

CHARLES M. CLEMENT,
FRANK C. MCGIRR,
H. S. P. NICHOLS
HENRY C. NILES,
HAROLD M. MCCLURE, *Chairman*